THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2018-0222

The State of New Hampshire

v.

Katherine Saintil-Brown

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE ROCKINGHAM COUNTY SUPERIOR COURT

BRIEF FOR THE STATE OF NEW HAMPSHIRE

THE STATE OF NEW HAMPSHIRE
Gordon J. MacDonald
Attorney General

Brandon H. Garod
Assistant Attorney General
NH Bar ID No. 21164
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301
603-271-1217
brandon.garod@doj.nh.gov

(15 minutes)

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1. Whether the State's evidence was sufficient to prove all elements of criminal neglect of an elder adult where the evidence showed that the defendant accepted the responsibility of caring for her elderly mother, and, knowing that she had fallen and couldn't get up, allowed her mother to lie on the floor for five days before calling for help, which resulted in serious bodily injury?

2. Whether the State's evidence was sufficient to prove all elements of negligent homicide when the defendant, knowing that her elderly mother had fallen and couldn't get up, allowed her to lie on the floor for five days before calling for help, which caused her death?

3. Whether the defendant satisfied her burden under the plain-error rule by showing that the trial court's erroneous jury instruction requires reversal of the criminal neglect charge?

4. Whether the State's evidence was sufficient to prove all elements of failure to report adult abuse when the defendant failed to make a timely report as required, knowing that her elderly mother had fallen and couldn't get up?

STATEMENT OF THE CASE

In 2017, the defendant, Katherine Saintil-Brown, was charged by indictment with one count of negligent homicide, RSA 630:3 (2016), one count of criminal neglect of an elder adult, RSA 631:8 (2016), and by information with one count of failure to report adult abuse, RSA 161-F:50 (2014). DB App.: 1, 3, 5; Tr. 90-91.[1] At the conclusion of the State's case, the defendant made a motion to dismiss the criminal neglect of an elder adult charge. Tr. 344. The court (*Delker*, J.) denied the motion. Tr. 349. The defendant did not make a motion to dismiss the negligent homicide charge or the failure to report adult abuse charge. Tr. 344-8. In January 2018, following a four day jury trial, the defendant was convicted on all three charges. Tr.: 515-17. The court sentenced the defendant to concurrent stand committed sentences of two to four years on the negligent homicide and criminal neglect of an elder adult charges, with one year of the minimum and one year of the maximum suspended for five years from release. S. Tr.: 29. On the failure to report adult abuse charge, the court sentenced the defendant to twelve months in the House of Corrections, suspended in its entirety for five years from release. S. Tr. 30.

This appeal followed.

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[1] "DB:_" refers to Saintil-Brown's brief and page number.
"CD" refers to the compact disc of Dr. David Mackenzie's trial deposition and the time.
"DB App.:_" refers to the appendix to Saintil-Brown's brief and page number.
"Tr.:_" refers to the trial transcript and page number.
"S. Tr.:_" refers to the sentencing transcript and page number.

STATEMENT OF FACTS

A. The State's Case

N.P. was born on March 10, 1940. Tr.: 337. Katherine Saintil-Brown is N.P.'s daughter and Meritel Saintil is N.P.'s granddaughter. Tr. 324. For many years, N.P. lived with her husband in a mobile home in Exeter. Tr. 329. In 2012, N.P.'s husband passed away and she continued living in the home on her own. Tr. 329-30. N.P. was obese, and her mobility was limited. Tr. 390. N.P. used a walker to get around and would walk by slowly shuffling her feet until she reached her destination. Tr. 282.

In May 2015, Officer Maurice Gagnon was dispatched to N.P.'s home. Tr. 268. Gagnon observed that both N.P. and the home were filthy and smelled foul. Tr. 272. Gagnon also observed that Saintil-Brown and Meritel were both living with N.P. Tr. 272. N.P. told Gagnon that she wanted Saintil-Brown and Meritel to continue living with her because she was having difficulty caring for herself and without their assistance, she would need to move into a nursing home. Tr. 273. Saintil-Brown and Meritel were both present during Gagnon's conversation with N.P. and complained to Gagnon about having to take care of her. Tr. 273.

Carol Lacroix, an investigator with the Bureau of Elder and Adult Services (BEAS), visited N.P. in June 2015. Tr. 298. Lacroix spoke with N.P. for approximately twenty minutes and offered to arrange for food delivery services. Tr. 303. N.P. told Lacroix that she wasn't interested in services because Saintil-Brown and Meritel were helping her around the house, so she didn't need outside assistance. Tr. 303. During her

conversation with N.P., Lacroix heard two women verbally interjecting from the kitchen area of the mobile home. Tr. 300- 301.

Lacroix visited N.P. again on January 25, 2016. Tr. 304. N.P. answered the door and spoke to Lacroix on the porch with the front door partially open. Tr. 304-05. During this visit, N.P. reiterated that her daughter and granddaughter were assisting her so she didn't need any additional services. Tr. 305.

On February 17, 2016, Saintil-Brown called the Exeter Fire Department and requested assistance getting N.P off the floor. Tr. 173-74. Multiple firefighters arrived at the home and were struck by a powerful odor of urine and feces. Tr. 181. The firefighters found N.P. lying on the living room floor wearing nothing but a soaking wet nightgown. Tr. 135, 159. N.P. was lying on a filthy carpet that looked as if it hadn't been cleaned or vacuumed in months. Tr.136. Firefighters also observed a McDonald's cheeseburger with one bite taken out of it on the floor near N.P.'s head. Tr. 136.

The residence was a small mobile home. Tr. 130. The kitchen and living room were connected and separated by a partition wall that was approximately four feet high. Tr. 131. Accordingly, the kitchen and living room were essentially one open area. Tr. 134. Saintil-Brown and Meritel were present in the kitchen/living room area when the firefighters arrived. Tr. 132. Saintil-Brown and Meritel showed no concern for the well-being of N.P. as she was evaluated and removed from the home. Tr. 141, 176. Saintil-Brown informed the firefighters that N.P. had been on the floor for five days. Tr. 138. Both women claimed they did not know how N.P. ended up on the floor but speculated that she may have tried to sit on her recliner

and then decided to lie on the floor instead. Tr. 186. When firefighter Michael Avellino asked why no one called for help sooner, neither woman responded. Tr. 186.

The firefighters quickly determined that N.P. was very sick and needed to go to the hospital. Tr. 181-82. When firefighters attempted to speak with N.P. they observed that she was suffering from an altered mental state. Tr. 181. N.P. was able to recall her name and location but could not provide any meaningful responses to other basic questions that were asked of her. Tr. 183. Specifically, when asked if she knew what month it was, N.P. replied "October," and she could not identify the day of the week or the current president. Tr. 183. Firefighters asked N.P. questions two or three times before getting a verbal response. Tr. 184. For the most part, N.P. either answered questions inappropriately or gave no response at all. Tr. 184.

Because of her altered mental state, N.P. was transported to Exeter Hospital without her consent. Tr. 163. N.P. continued to say "I don't want to go" over and over, but was incapable of discussing the issue or communicating about what was happening around her. Tr. 162. N.P. would also say "I don't want to go" inappropriately, in response to unrelated questions such as inquiries about her medical history. Tr. 189. Because of N.P.'s size, it took the efforts of five firefighters to roll her onto a medical tarp and carry her out of the mobile home. Tr. 185. When N.P. was rolled onto the tarp, the firefighters observed that she had feces hanging out of her rectum. Tr. 140.

Once in the ambulance, firefighters obtained N.P.'s vital signs and determined that she was hypothermic with a core temperature of 92

degrees. Tr. 141. Firefighter Timothy Sirois testified that N.P.'s low temperature was likely a contributing factor to her altered mental status. Tr. 142.

After N.P. arrived at Exeter Hospital, nurses began the process of cleaning layers of feces from her legs. Tr. 243-44. After she was cleaned, nurses found a concerning ulcer on N.P.'s inner thigh. Tr. 244-45. The ulcer was the size of a computer mouse and was surrounded by dead and rotting flesh. Tr. 211. Based on the appearance of the wound and N.P.'s vital signs, Dr. Catherine Fernando suspected that N.P. was suffering from a necrotizing soft tissue infection (NSTI). Tr. 211.

NSTIs are caused by bacteria that gained entry to the body through an open wound, and then burrow down into the deeper layers of the body such as the fat and the muscle. Tr. 211-12. NSTIs are particularly dangerous because they spread rapidly and quickly kill or destroy the infected tissue. CD 5:20, 6:53. Dr. Fernando testified that because NSTIs progresses rapidly, treatment needs to be initiated as quickly as possible. Tr. 219. Dr. Fernando further testified that the longer treatment was delayed, the higher the likelihood that the patient would die. Tr. 219. N.P. was also suffering from sepsis. Tr. 208. Dr. Fernando described sepsis as the failure of other bodily systems as a result the body using all of its systems to fight off an infection. Tr. 208.

A CAT scan of N.P.'s lower extremities revealed that the infection was 17 centimeters by 6.6 centimeters in size and was the largest infection Dr. Fernando had ever seen. Tr. 217. N.P.'s blood work showed an elevated white cell count, evidence of muscle breakdown, and an elevated lactic acid

level, all of which were consistent with a necrotizing soft tissue infection. Tr. 213-14.

Dr. Fernando told the jury that in her opinion, N.P. developed an ulcer and subsequent necrotizing soft tissue infection as a result of lying on the ground for five days. Tr. 220. Dr. Fernando explained "[w]hen you're not moving, you're applying pressure on a part of your body continuously. Eventually, that pressure breaks down the skin on top, and it goes deeper and deeper and deeper the longer you are in that position."Tr. 219. Dr. Fernando testified that the presence of a wet entity like urine would make it easier for skin to breakdown. Tr. 220. Once the skin had broken down, bacteria was able to enter the wound and caused the infection. Tr. 220.

N.P.'s condition required immediate surgical intervention to remove the infected tissue. Tr. 218. Because Exeter Hospital was not equipped to perform the operation that N.P. required, she was transported to Maine Medical Center in Portland, Maine. Tr. 218-19, 256.

While N.P. was being treated at Exeter Hospital, Saintil-Brown called the emergency room twice and spoke with two nurses who were on duty at the time. Tr. 234-35, 246. Saintil-Brown first spoke with Jennifer Charache. Tr. 234. Saintil-Brown told Charache that she was concerned because N.P. needed to appear at an eviction hearing the following day and she wanted to hospital to write a letter to the court explaining that she wouldn't be able to attend. Tr. 235.Charache told Saintil-Brown that she would forward her request to N.P.'s primary nurse. Tr. 237. Without any prompting from Charache, Saintil-Brown volunteered information about what happened to N.P. Tr. 237. Saintil-Brown told Charache that N.P. was capable of walking but refused to do so. Tr. 236. Saintil-Brown further

claimed that a social worker had come to the house and said that they couldn't force her to go to the hospital and told them to let her stay on the floor." Tr. 236. Saintil-Brown also claimed that if N.P. was soiled when she arrived at the hospital, it happened after she left the home. Tr. 236.

Approximately 45 minutes later, Saintil-Brown called again and spoke with Jennifer Jourdanais. Tr. 246. Saintil-Brown screamed at Jourdanais that she needed a note excusing N.P. from her court hearing. Tr. 247. Jourdanais explained that the staff were aware of the issue but were trying to care for N.P. medically at the time and were prepping her for transfer to another hospital because of the severity of her condition. Tr. 247. Saintil-Brown then continued to scream at Jourdanais claiming that everyone was blaming her for N.P.'s condition and that it wasn't her fault. Tr. 247. Saintil-Brown again claimed that a social worker had visited the home and had told her that she couldn't force N.P. to get off the floor. Tr. 247. Neither Jourdanais nor Charache made any statements or asked any questions that cast blame on Saintil-Brown in any capacity. Tr. 237, 248. Sergeant Justin Ranauro of the Exeter Police Department made efforts to determine whether a social worker had visited the home while N.P. was on the floor but was unable to find any evidence that such a visit occurred. Tr. 309-10, 335-37.

Upon arrival at Maine Medical Center, emergency room physician David Mackenzie evaluated N.P. CD 2:34. Dr. Mackenzie testified that N.P. arrived in Maine with a working diagnosis of a necrotizing soft tissue infection, but he examined N.P. in order to ensure that she had been accurately diagnosed. CD 13:37. Dr. Mackenzie performed a physical evaluation of N.P. and observed areas of dead, necrotic skin on both of

N.P.'s inner thighs. CD 22:03. Dr. Mackenzie observed that the area of affected skin was worse on the left thigh than it was on the right. CD 22:04. N.P.'s wounds had areas of redness and warmth surrounding them, which were "in keeping with a skin or soft tissue infection." CD 22:15. "The wounds were roughly facing each other and had a symmetry to them on both sides." CD 22:41. Based on his review of N.P.'s prior history, his physical examination, and his review of her lab work, Dr. Mackenzie confirmed Dr. Fernando's diagnosis of a necrotizing soft tissue infection. CD 22:04-22:19.

Dr. Mackenzie testified that ulcers were caused by pressure on the skin over a period of time. CD 27:50. Dr. Mackenzie said that people who cannot move or make the necessary adjustments were at a high risk of developing ulcers. CD 28:19-28:22. Based on the appearance and location of the wounds and the history of N.P. lying on the floor for five days, it was Dr. Mackenzie's opinion that N.P. developed the ulcer as a result of being on the ground for a prolonged period of time. CD 29:42- 29:52. Dr. Mackenzie testified that he did not believe N.P. would have developed a similar wound if she had been sitting in her chair for five days instead of lying on the ground. CD 29:58. Dr. Mackenzie explained that when people were sedentary in chairs or similar soft surfaces they had some freedom of movement and were constantly shifting their weight or making minor adjustments to alleviate pressure. 30:00-30:13. Conversely, Mackenzie testified that a person who remained on a hard surface like the floor lacked the requisite freedom of movement to make the necessary adjustments, and would develop ulcers relatively quickly. CD 30:14-30:27.

Dr. Mackenzie opined that N.P.'s wounds and infection were caused by N.P. lying on the floor for five days, combined with the constant presence of the urine and feces during that time. CD 33:36-33:51. Dr. Mackenzie also concluded that it was "highly unlikely" that the infection was caused by anything other than N.P. lying on the floor in her own waste for five days. CD-33:52-34:01. Dr. Mackenzie estimated the onset of the infection likely occurred within 48 to 72 hours prior to her presentation at the hospital. CD 34:13-34:26.

Dr. Brittney Misercola, a surgical resident at Maine Medical Center, evaluated the potential treatment options that were available for N.P.. Tr. 256-57. Dr. Misercola testified that aggressive surgery to remove all of the infected tissue, followed by intensive care and antibiotics provided the only option that would have given N.P. a chance of survival. Tr. 260. Dr. Misercola testified that because of the advanced stage of N.P.'s infection and her poor health at baseline, her chances of ultimately surviving the entire treatment course were low. Tr. 260. The only alternative option was withdrawal of care and allowing N.P. to die comfortably. Tr. 260.

N.P. was incapable of deciding how to proceed because of her severely altered mental state. Tr. 261 Dr. Misercola discussed the options with Saintil-Brown and Meritel, who elected to make N.P. comfortable and allow the infection to take its course. Tr. 262. N.P. was transferred to hospice care and died on February 20, 2016, of sepsis due to or as a consequence of necrotizing fasciitis. Tr. 263.

Danica Kurzhalz, a social worker with Merrimack Valley Hospice, met with Saintil-Brown and Meritel shortly before N.P.'s death. Tr. 288-89. During the meeting, Saintil-Brown identified herself as N.P.'s primary

caregiver. Tr. 291. Saintil-Brown also told Kurzhalz that it was difficult being her mother's caregiver because N.P. was alert and refused medical attention. Tr. 290. Kurzhalz testified that Saintil-Brown and Meritel admitted that N.P. had fallen on the floor and they acknowledged that her fall may have contributed to her ultimate decline. Tr. 290. Saintil-Brown also mentioned that N.P. had a bank account with her and Meritel's names on it, but was unsure if they could access it while N.P. was alive. Tr. 298.

Saintil-Brown met with her sister, Allison Raiche after N.P.'s death. Tr. 323-24. During this meeting, Saintil-Brown told Raiche that N.P. had fallen onto the floor. Tr. 325. Saintil-Brown also expressed remorse to Raiche for telling N.P. that she couldn't wait until she died so she could get her money. Tr. 324. Raiche had witnessed multiple prior arguments between the two in which Saintil-Brown made similar statements. Tr. 331. Saintil-Brown and Meritel each inherited $33,640 when N.P. died. Tr. 338-39.

B. The Defendant's Case

The defendant's primary witness was Meritel. Tr. 362. Meritel testified that as a result of a bad car accident years ago N.P.'s legs and feet were always swollen. Tr. 366. Throughout her life, Meritel had only seen N.P. lie on the floor once before. Tr. 375. On that occasion in 2011, Meritel saw N.P. sleeping on her bedroom floor, but N.P. was able to get up on her own using her bed for support. Tr. 375. Meritel had never seen N.P. lying on the living room floor, nor had she seen N.P. in a situation where she was incapable of lifting herself off the floor. Tr. 400.

Meritel woke up on February 13, 2016, and Saintil-Brown told her that N.P. was on the floor. Tr. 376. N.P. then crawled to the couch and tried to lift herself off the floor using the couch for support. Tr. 401-02. Meritel and Saintil-Brown tried to help by pulling N.P. onto the couch but they were unable to lift her. Tr. 401-02. Meritel claimed that after they were unable to get N.P. off the floor, she told them to leave her alone. Tr. 403. Meritel testified that when they couldn't lift N.P., she tried to bribe her by offering to make her spaghetti if she got off the floor. Tr. 379. Meritel also claimed that they threatened to call the fire department if N.P. didn't get up. Tr. 381. Later that day, N.P. said that she saw her grandson dancing on the walls of the home, but Meritel thought she was joking around. Tr. 377, 415.

After N.P. had been on the floor for three days, Saintil-Brown and Meritel were concerned. Tr. 424. They researched symptoms of a stroke and other conditions that could possibly explain why she was still on the floor. Tr. 424. After they researched the symptoms of a stroke, Saintil-Brown told Meritel that she was going to wait one more day and then call for help if N.P. remained on the floor. Tr. 425.

On cross-examination, Meritel admitted that she and the defendant moved in with N.P. so they could help her. Tr. 388-389. Meritel then attempted to minimize their role as caregivers by claiming that the primary reason they moved in was that N.P. was sad and lonely. Tr. 389. The State then called Calice Ducey, an investigator with the Attorney General's Office as a rebuttal witness. Tr. 461. Ducey interviewed Meritel in October 2016. Tr. 462. Ducey testified that during the interview, Meritel said that she and the defendant moved in with N.P. "to take care of her." Tr. 463.

Meritel did not tell Ducey that she moved in because her grandmother was upset and wanted her to do so. Tr. 463.

SUMMARY OF THE ARGUMENT

1. The State's evidence proved all elements of the criminal neglect charge beyond a reasonable doubt. The defendant admitted that she was the victim's primary caregiver, knew that her mother had fallen and couldn't get up, and waited five days before calling for assistance. Multiple medical professionals testified that the defendant's inaction caused N.P. to develop a necrotizing soft tissue infection.

2. The State's evidence proved all elements of the negligent homicide charge beyond a reasonable doubt. The defendant admitted that she knew her elderly mother had fallen and couldn't get up on her own. The defendant also admitted to leaving her mother on the floor in deplorable conditions for five days. Multiple medical professionals testified that the defendant's inaction for five days caused N.P. to develop a necrotizing soft tissue infection. The parties stipulated that the infection caused N.P.'s death.

3. Although the trial court erred in its criminal neglect of an elder adult instruction, the defendant has failed to satisfy her burden under the plain-error rule because the error did not affect substantial rights, nor did it affect the fairness, integrity or public reputation of judicial proceedings. Alternatively, even if this Court finds that all four prongs of the plain-error test have been satisfied, this Court should not reverse the defendant's conviction because the trial court's error was harmless.

4. The State's evidence proved all elements of the failure to report charge beyond a reasonable doubt. The defendant knew that N.P. was a incapacitated adult when N.P. unsuccessfully crawled to the couch

and tried to lift herself off of the floor. The defendant also knew that remaining on the floor for multiple days was a hazardous condition but elected to allow N.P. to remain on the floor instead of making a report as required by RSA 161-F:46.

ARGUMENT

1. The evidence was sufficient to support the jury's verdict of guilty on the criminal neglect charge where the defendant, after accepting the responsibility to provide care for her elderly, physically disabled mother, left her lying on the floor for five days wearing nothing but a urine soaked nightgown in mid-February; and where lying on the ground for five days caused the victim to develop a necrotizing soft tissue infection.

The majority of the defendant's arguments are raised under the plain-error doctrine. DB: 9. The only issue raised by the defendant that was preserved for appeal is the question of whether the State submitted sufficient evidence to establish that the defendant was N.P.'s caregiver under RSA 631:8, I (b) (2016). Tr. 344-349. Accordingly, the State will address the sufficiency of the "caregiver" evidence separately from the sufficiency of the evidence establishing the other elements of RSA 631:8.

A. The evidence was sufficient to establish that the defendant was N.P.'s caregiver.

The defendant asserts that the State submitted insufficient evidence to establish that she was N.P.'s caregiver pursuant to RSA 631:8. DB: 26-33. To prevail on a sufficiency of the evidence challenge, "the defendant must prove that no rational trier of fact, viewing the evidence, and all reasonable inferences from it in the light most favorable to the State, could have found guilt beyond a reasonable doubt." *State v. Dion*, 164 N.H. 544, 548 (2013). "In reviewing the evidence, [this Court will] examine each evidentiary item in the context of all the evidence, not in isolation." *State v. Kelly*, 159 N.H. 449, 455 (2009). Circumstantial evidence may be sufficient

to support a finding of guilty beyond a reasonable doubt. *Id.* "The trier of fact may draw reasonable inferences from facts proved and also inferences from facts found as a result of other inferences, provided they can be reasonably drawn therefrom." *Id.* This Court will "review the entire trial record because, even though the defendant is not required to present a case, if she chooses to do so, she takes the chance that evidence presented in her case may assist in proving the State's case." *Dion*, 164 N.H. at 458.

"[W]here the proof involves both direct and circumstantial evidence, a sufficiency challenge must fail if the evidence, including the jury's credibility determinations, is such that a rational trier of fact could find guilt beyond a reasonable doubt, even if the evidence would support a rational conclusion other than guilt if the jury had resolved the credibility issues differently." *State v. Saunders*, 164 N.H. 342, 352 (2012). However, if the proof involves wholly circumstantial evidence, the question is "whether, even assuming all credibility resolutions in favor of the State, the inferential chain of circumstances is of sufficient strength that guilt is the sole rational conclusion." *Id.* In this case, State offered both direct and circumstantial evidence that the defendant was N.P's caregiver.

RSA 631:8, I (b) defines caregiver as follows:

> "Caregiver" means any person who has been entrusted with, or has assumed the responsibility voluntarily, by contract, or by order of the court, for frequent and regular care of or services to an elderly, disabled, or impaired adult, including subsistence, medical, custodial, personal or other care, on a temporary or permanent basis. A caregiver shall not include an uncompensated volunteer, unless such person has agreed to provide care and is aware that the person receiving care is dependent upon the care provided.

A review of the evidence shows that the defendant's sufficiency challenge must fail. Multiple witnesses testified that N.P.'s physical mobility was extremely limited, that she was dependent on the defendant for assistance, and that the defendant knew that N.P. depended on her for care at the time the defendant found her on the floor.

Officer Gagnon testified that in May 2015, he observed N.P. seated in a recliner with a swollen purple foot. Tr. 271. During his visit, Gagnon had a discussion with N.P. about whether she wanted the defendant to continue living with her. Tr. 273. With the defendant within earshot, N.P. told Gagnon that "[s]he had a difficult time taking care of herself, and if [the defendant and Meritel] weren't there, she would have to go into a nursing home." Tr. 273. In response to N.P. expressly asserting her dependence on the defendant and Meritel, both women complained about having to care for her. Tr. 273. The defendant's decision to express her dissatisfaction with her obligation to care for N.P. rather than deny the existence of such a responsibility was direct evidence that she knew and understood her role as a caregiver and that N.P. depended on her.

A month after Gagnon's visit, N.P. told Carol Lacroix that the defendant and Meritel were there to "assist her with the household and assist with things she couldn't manage there." Tr. 303. Lacroix spoke with N.P. at the front door and heard two women in the kitchen area who interjected throughout the conversation. Tr. 300-01. This testimony comprised additional direct evidence that N.P. was dependent on the defendant for care, and circumstantial evidence that the defendant and Meritel were present, and overheard N.P. discuss their roles as caregivers with Lacroix.

Lacroix visited N.P. again approximately three weeks before she fell to the floor. During the second visit, N.P. reiterated that she was not in need of any services from the BEAS because the defendant and Meritel were there to take care of her. Tr. 305. Accordingly, the jury heard direct evidence that N.P. remained dependent on the defendant for care in the weeks leading up to her fall.

The jury also heard testimony from Danica Kurzhals describing her meeting with the defendant and Meritel. During the meeting, the defendant identified herself as N.P.'s primary caregiver and discussed the difficulties of being a caregiver to her mother. Tr. 291. The defendant specifically discussed the difficulty of being a caregiver for a loved one who was refusing medical attention. Tr. 290. The defendant's conversation with Kurzhalz was not focused on difficulties associated with shopping or cooking for N.P., but rather was specifically focused on the difficulties she experienced when N.P. refused medical care. The statements to Kurzhalz established that the defendant was aware that her responsibilities went far beyond providing food and running errands.

The jury also heard testimony from Cheryl Mastromarino that, even with the assistance of a walker, N.P.'s mobility was severely limited in the time preceding her death. Tr. 282. Mastromarino was aware that N.P. struggled to get around on her own from infrequent encounters with N.P. Accordingly, it is reasonable to infer that the defendant, who saw N.P. every day, knew of these issues and that N.P. needed the defendant's assistance in various ways.

Considering the above evidence, and all reasonable inferences from it in the light most favorable to the State, a reasonable jury could have

found that the defendant assumed responsibility for N.P.'s care and was aware of N.P.'s dependence on her to provide such care. Accordingly, the trial court properly denied the defendant's motion to dismiss.

B. The evidence was sufficient to establish the remaining elements of RSA 631:8

The defendant also argues that the evidence was insufficient to establish the remaining elements of RSA 631:8. Specifically, the defense contends that the State introduced insufficient evidence that the defendant neglected her responsibilities to N.P., acted recklessly, and that her neglect caused serious bodily injury. DB: 28-4. The defendant did not preserve these claims during her motion to dismiss at trial. DB: 344-48. Since the defendant's claims were not preserved, this Court reviews them under the plain-error standard. *State v. Russell*, 159 N.H. 475, 490 (2009).

The plain-error rule should be invoked "sparingly, its use limited to those circumstances in which a miscarriage of justice would otherwise result." *Id.* at 489. For a successful plain error claim, "(1) there must be an error; (2) the error must be plain; (3) the error must affect substantial rights; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings." *Id.* at 489-90 (quotation omitted). The defendant cannot satisfy that test.

i. Neglect

The defendant first asserts that there was insufficient evidence to prove neglect. DB: 29-30. The defendant contends that RSA 631:8, I (f)

required the State to prove that the defendant had specifically assumed responsibility for N.P.'s medical or hygienic care. DB: 31-32. The defendant further claims that the State's evidence only established that the defendant and Meritel assumed responsibility for care of N.P.'s subsistence in that they agreed to provide her with food. DB 31.

The indictment charging the defendant with criminal neglect of an elder adult specifically accused her of neglect by "allowing N.P. to [lie] on the floor of their shared home for multiple days in her own urine and feces without calling for help." DA: A5. Thus, the neglect at issue was the defendant's failure to call for help, not her failure to treat or clean N.P.

RSA 631:8, I (f) reads as follows:

> "Neglect" means the failure or omission on the part of the caregiver to provide the care, supervision, and services which he or she has voluntarily, or by contract, or by order of the court agreed to provide and which are necessary to maintain the health of an elderly, disabled, or impaired adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider necessary for the well-being of an elderly, disabled, or impaired adult.

The plain language of the statute required the State to prove: (1) that the care in question was of the type that the defendant agreed to provide; and (2) that the care was of the type that is necessary to maintain the wellbeing of an elderly adult. The evidence submitted at trial clearly satisfied both prongs.

The defendant's contention that the type of care that she agreed to provide was narrowly restricted to a single category of care, such as sustenance, is inconsistent with the evidence. Carol Lacroix testified that

N.P. understood that both women were living with her to assist her with the aspects of her life that she could not manage on her own. Tr. 303. Because of her age, size, and physical disabilities, there were multiple aspects of N.P.'s care that she could not manage on her own. The broader extent of the defendant's obligations was further supported by her conversation with Danica Kurzhals regarding the difficulties associated with being a caregiver for someone who refuses medical attention. Tr. 291.

The evidence established that the defendant accepted the responsibility of assisting N.P. with the aspects of her life that she could not manage on her own. Calling for help in an emergency situation where N.P. fell and could not get up, despite clearly demonstrating that she desired to, certainly fell within the type of care the defendant agreed to provide. The jury heard that the defendant knew that N.P. had fallen to the floor and couldn't get up on her own. Tr. 290, 325. N.P. tried to get up immediately by crawling to the couch and attempting to pull herself off the ground but she was physically unable to do so. Tr. 401. The defendant and Meritel then attempted to lift N.P. off the ground but they were incapable of doing so because of her size. Tr. 402. At this point, the defendant had exhausted all options other than calling someone else to assist. N.P. had clearly shown her that she was not capable of getting up on her own, or with the assistance of her two caregivers, and it became the defendant's obligation to pursue additional assistance to get her off the ground. Rather than calling for help, the defendant and Meritel attempted to bribe and threaten N.P. into getting up despite their clear knowledge that she was incapable of doing so.

The evidence presented was sufficient to allow a reasonable jury to conclude that by waiting five days before calling for assistance, the

defendant failed to provide the care she agreed to provide, and that removing N.P. from the floor was necessary to maintain her health.

ii. Causation

The defendant argues that the State failed to prove that the defendant's failure to call for help caused a necrotizing soft tissue infection. DB: 33-36. In order to prove causation, the State must prove beyond a reasonable doubt that the defendant's conduct was the predominant cause of the injury and without the conduct, the injury would not have occurred. *See State v. Lamprey*, 149 N.H. 364, 367 (2003).

Two different emergency room physicians treated N.P. and testified at trial. Both Doctors Mackenzie and Fernando were highly educated, trained, and experienced in the area of diagnosing and treating infections. Tr. 201-02, CD: 00:14-2:14. Dr. Fernando testified that ulcers were caused by pressure as a result of remaining in the same position for a prolonged period of time. Tr. 219. Dr. Fernando also testified that necrotizing soft tissue infections were formed when bacteria, like the type found in human feces, entered an open wound on the body. Tr. 220. Dr. Fernando testified that, in her opinion, N.P.'s necrotizing soft tissue infection was caused by lying on the floor in her own waste for five days. Tr. 220.

Dr. Mackenzie similarly testified that in his opinion, both the ulcer and the necrotizing soft tissue infection were directly caused by N.P. lying on the ground in the same position for five days. CD: 29:41-29-58. Dr. Mackenzie supported his position by noting that N.P. had symmetrical necrotizing infections on both of her inner thighs, in the area where her legs would have been touching each other while she was lying on the floor. CD

22:45. Accordingly, the jury heard overwhelming evidence that N.P.'s necrotizing soft tissue infection was caused by lying on the floor for five days in her own waste.

The defendant contends that the court should have spontaneously dismissed the charge because, even if the defendant had called for help, N.P. would have refused assistance and would have developed the infection anyway. DB: 34. Speculation regarding what N.P. would have done if the fire department had been called earlier has no bearing on this Court's analysis of whether the court committed plain-error. In formulating her position, the defendant relies exclusively on N.P.'s prior history of refusing assistance. DB: 33. N.P.'s history of refusing help was well documented, but none of N.P.'s prior refusals occurred in an emergency. Tr. 302-06, 356-57.

N.P.'s distrust of doctors and history of turning down services she determined to be non-essential did not foreclose the possibility that she would have accepted help getting off the floor if she had been given such an opportunity. Meritel's testimony that N.P. crawled to the couch and tried to lift herself off the floor, and then allowed her and Saintil-Brown to try to lift her up, suggests that N.P. would have accepted a helping hand to get onto the couch. Tr. 401-402. The defendant's argument also assumes that the fire department would have complied with N.P.'s potential refusal of assistance. Given the testimony regarding N.P.'s condition, and Meritel's testimony that N.P. was hallucinating on the first day, it is reasonable to conclude that even if N.P. had refused assistance, the firefighters would have transported her to the hospital without her consent.

Since the defendant waited five days before calling for help, N.P. was never given the opportunity to accept or reject such assistance. Taking all the evidence in the light most favorable to the State, a reasonable jury could have found that the defendant's delay is seeking assistance caused N.P.'s infection. Accordingly, the defendant cannot sustain her burden under the plain-error analysis.

iii. Recklessness (mens rea)

Finally, the defendant argues that the State failed to introduce sufficient evidence that the defendant's delay in calling for help amounted to recklessness. DB: 36. In order to prove recklessness, the State was required to prove that the defendant was aware of, but disregarded, a substantial and unjustifiable risk that her five day delay in calling for help would result in serious bodily injury to N.P. *State v. Hull*, 149 N.H. 706, 713 (2003). Additionally, the State was required to prove that Saintil-Brown's disregard for the risk of injury "was a gross deviation from the regard that would be given by a law-abiding citizen." *Id.* "Because determination of the defendant's awareness is a subjective inquiry, it may be proven by any surrounding facts and circumstances from which such awareness may be inferred." *Id.* The State is not required to prove that the defendant was aware of the precise risk or injury that resulted from her conduct. *Id.* The defendant's argument regarding the rare nature of NSTIs has no bearing on this Court's analysis.

The evidence supports the jury's finding that the defendant was aware that leaving her elderly mother on the floor for five days created a substantial and unjustifiable risk that she would suffer serious bodily injury

as a result. First, the defendant acknowledged to multiple witnesses that N.P. was on the floor as the result of a fall. Tr. 290, 325. Since the defendant knew that her 75-year-old mother had fallen and couldn't get up, the jury could have reasonably inferred that the defendant knew that any delay in seeking assistance would pose a substantial and unjustifiable risk that N.P. was injured and her condition would continue to deteriorate over time. Further, after N.P. had been on the floor for three days, the defendant began to wonder if her mother had suffered a stroke. Tr. 423-24. Despite acknowledging her concern that N.P. was still on the floor, the defendant then waited an additional 24 hours before calling for assistance. Tr. 425.

The defendant's conduct after N.P. was transported to Exeter Hospital also supported the jury's determination that she was aware of the risk associated with allowing her mother to remain on the floor. While emergency room workers were attempting to save N.P.'s life, the defendant called and screamed at two nurses in an attempt to convince them that she was not to blame for her mother's condition. Tr. 234-36, 247-48. Both nurses testified that they did nothing to suggest that the defendant had done anything wrong. Tr. 237, 248. The defendant's assumption that she would be blamed or held responsible for N.P.'s condition clearly demonstrated her awareness of the risk involved with waiting five days before seeking assistance.

The defendant also made multiple statements to the nurses which were inconsistent with the rest of the evidence. For example, the defendant attempted to minimize her culpability by claiming "a social worker came to the house and said that they were not able to force her to go and to let her stay on the floor." Tr. 236. Carol Lacroix testified that no such visit

occurred. Tr. 309. The defendant also claimed that N.P. was not soiled before she was taken from the home. Tr. 236. Multiple firefighters testified that N.P. was covered in feces and urine upon their arrival at the home. Tr. 135, 159, 175. Accordingly, the jury could have reasonably inferred from the defendant's dishonesty that she was aware of the substantial and unjustifiable risk associated with her conduct and was desperately attempting to mitigate her culpability.

Taking the evidence in the light most favorable to the State, the evidence was sufficient to prove all the elements of the criminal neglect charge beyond a reasonable doubt. Accordingly, the defendant cannot satisfy her burden under the plain-error rule.

2. The State presented sufficient evidence to prove all elements of negligent homicide where the evidence established that the defendant knew that her elderly mother had fallen on the floor and couldn't get up and was covered in her own urine and feces, but waited five days before calling for help, which resulted in a necrotizing soft tissue infection that caused her death.

The defendant argues that the State failed to prove that her conduct amounted to criminal negligence. DB 45. The defendant did not preserve these claims during her motion to dismiss at trial. DB: 344-48. Since the defendant's claims were not preserved, this Court reviews them under the plain-error standard. *Russell*, 159 N.H. at 490.

In order to prove the defendant acted negligently, the State was required to prove that she failed to become aware of a substantial and unjustifiable risk that N.P. would die as a result of waiting five days before calling for help. *State v. Dion*, 164 NH 544, 548 (2013). The State must also prove that the risk was of such a nature and degree that the defendant's failure to become aware of it constituted "a gross deviation from the conduct that a reasonable person would observe in the situation." *Id.* This Court uses an objective test to determine whether the defendant failed to become aware of a substantial and unjustifiable risk, "and does not consider the defendant's subjective perception." *State v. Shepard*, 158 N.H. 743, 746 (2009).

The risk at issue was the risk of death. There was overwhelming evidence to support the jury's finding that the defendant's failure to become aware of the risk that N.P. could die if left on the floor for days constituted a gross deviation from the conduct that a reasonable person would have observed in this situation. The jury heard evidence that N.P. was 75 years

old, obese, and suffered from physical disabilities that made it difficult for her to walk under ordinary conditions. Tr.135, 284, 337. The jury also heard that the defendant knew that N.P. had fallen and couldn't get off the floor on her own or with the assistance of the defendant and Meritel. Tr. 290, 401-02. At this point, the defendant was aware that N.P. would be on the floor until she called for assistance.

It is objectively clear that when an elderly, disabled woman has fallen and can't get up, there is a risk of death if she's left on the floor for a prolonged period of time. The risk became clearer when shortly after falling to the floor, N.P. began acting strangely and claimed she could see her grandson dancing on the walls of the home. Tr. 377. N.P.'s hallucination after falling was a clear sign that her health was deteriorating and that further inaction posed a risk of death. Certainly, by the fourth day when the defendant became concerned that N.P. had suffered a stroke, a reasonable person would have been aware that further delay in seeking assistance created a substantial and unjustifiable risk of death.

The risk that N.P. would die if left on the floor in deplorable conditions for five days after falling was objectively clear and supported by significant evidence. Taking the evidence in the light most favorable to the State, the evidence established that the risk was of such a nature and degree that the defendant's failure to become aware of it constituted a gross deviation from the conduct that a reasonable person would have observed. Although N.P. lived her life covered in her own waste, her inability to get off the floor and hallucinations were a substantial departure from her ordinary behavior. Taken in the light most favorable to the State, the evidence established that a reasonable person in the defendant's position

would have become aware that inaction for five days despite a drastic shift in behavior following a fall, created a substantial and unjustified risk of death. Accordingly, the defendant has failed to satisfy her burden under the plain-error rule.

3. Although the trial court committed an error when instructing the jury on the criminal neglect charge, the defendant has not shown that the error supports a reversal under the plain-error rule.

The defendant argues that her conviction for criminal neglect of an elder adult should be reversed because the court committed plain-error by erroneously defining an element of the crime in its jury instructions. DB: 52. The defendant's argument should be rejected as she cannot satisfy the plain-error test as discussed in section 1, B of this brief.

The first inquiry under the plain-error test is whether the trial court committed an error. The purpose of jury instructions is:

> to state and explain to the jury, in clear and intelligible language, the rules of law applicable to the case. When reviewing jury instructions, [this Court] evaluate[s] allegations of error by interpreting the disputed instructions in their entirety, as a reasonable juror would have understood them, and in light of all the evidence in the case. [This Court] determine[s] whether the jury instructions adequately and accurately explain[ed] each element of the offense and reverse[s] only if the instructions did not fairly cover the issues of law in the case.

State v. Hernandez, 159 N.H. 394, 400 (2009) (citations omitted).

The court instructed the jury that in order to convict the defendant, the State was required to prove that she was unable to call for help through no fault of her own, despite a good faith effort to do so. The court's instruction was clearly contrary to the language of the statute which required the State to prove that the defendant was *not* unable to provide care through no fault of her own. Since the court misstated the law, it committed an error. The erroneous instruction appears to be the result of a

typographical error in that the court mistakenly omitted the word "not" from its instructions.

This Court next determines whether the error was plain. "Plain is synonymous with clear or, equivalently, obvious." *State v. Richard*, 160 N.H. 780, 789 (2010) (quotation omitted). As stated above, the court's instruction misstated the requirements of the statute. Accordingly, the error was plain.

Since "there was error, and . . . the error was plain, the burden is on the defendant to prove that the error affected substantial rights." *State v. Emery*, 152 N.H. 783, 787 (2005). "Generally, to satisfy this burden, the defendant must demonstrate that the error was prejudicial—that it affected the outcome of the proceeding." *Id.* This Court will find prejudice when it "cannot confidently state that the jury would have returned the same verdict in the absence of error." *State v. Mueller*, 166 N.H. 65, 70 (2014). The defendant cannot satisfy that burden here.

The defendant argues that she suffered prejudice because the jury's verdict, in conjunction with the erroneous instruction, demonstrates that she was entitled to an acquittal. DB: 51. The defendant argues that, by convicting her of criminal neglect, the jury must have found that the State proved that she was without fault and was unable to call for help despite a good faith effort to do so. The defendant's assertion is wholly inconsistent with the jury's verdict.

The defendant correctly states that this Court presumes that juries follow the instructions. *State v. Cooper*, 168 N.H. 161, 171 (2015). Accordingly, this Court presumes that the jury followed the instructions when finding that the defendant acted recklessly. Through that finding, the

jury necessarily found that the defendant was aware of, and consciously disregarded the substantial and unjustifiable risk that waiting to call for help would result in serious bodily injury to N.P. Tr. 506-09. The jury also found that the defendant's disregard of the risk was a gross deviation from what a law-abiding person would have done. Tr. 509. This finding necessarily precludes a finding that the defendant was without fault and was simply unable to call in a timely manner.

The defendant's assertion is also inconsistent with the evidence. The defendant was convicted of failing to provide care, specifically, calling for help in a timely manner. There was no dispute that the defendant had the ability to call for help at any time throughout the five days that N.P. was on the floor, but chose not to. Meritel testified that before she went to bed on the first night, the defendant picked up the phone and put it on a desk. Tr. 381. The defendant had the phone in her hand on the first day and could have easily called for assistance. Meritel also testified that the defendant left the house and went to a McDonald's restaurant every day. Tr. 385. Nothing impeded the defendant from stopping at the police or fire department and requesting help during any of her daily trips.

In short, the State proved beyond a reasonable doubt that the defendant's failure to call was not the result of an inability to do so. No evidence or argument existed that could have reasonably supported a finding that the defendant lacked the ability to call for help. Additionally, there was no evidence or argument suggesting that the defendant made any effort, let alone a good faith effort, to place a call for help prior to the fifth day. Accordingly, the defendant cannot meet her burden of proving that the

outcome of the case would have been different if the court had instructed the jury properly.

Even if this Court concludes that the erroneous instruction affected substantial rights, it nevertheless should affirm the defendant's conviction because she cannot meet the fourth prong of the plain-error standard, under which this Court "must decide whether the trial court's error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings." *Russell*, 159 N.H. at 491 (quotation omitted). "[U]nder the fourth prong, an appellate court has the discretion to remedy the error . . . , [but such discretion must be exercised] on a case-specific and fact-intensive basis." *Id.* (quotation omitted).

This Court has previously found that the fourth prong of the plain-error rule was not satisfied when an element of an offense was erroneously defined in the court's instructions. *See, e.g. State v. Ortiz*, 162 N.H. 585, 591-92 (2011); (no plain-error when jury instructions contained incorrect mental state for felonious sexual assault.) In *Ortiz*, the trial court erroneously instructed the jury that the requisite mental state was "knowingly" when the proper mental state was "purposely." *Id.* at 591. In ruling that the plain-error standard had not been satisfied, this Court reasoned that "the evidence that the defendant in *Ortiz* had acted purposely was overwhelming and essentially uncontroverted." *Id.* at 592.

Similar to *Ortiz*, the evidence that the defendant had the ability to call for help and made no good faith effort to do so prior to the fifth day was overwhelming and uncontroverted. After hearing all the evidence, the jury found that the defendant acted recklessly and found her guilty of criminal neglect. This Court should not allow a typographical error to

upend the defendant's conviction despite the jury's verdict and the overwhelming evidence to support it. The defendant has not sustained her burden under the plain-error rule. This Court should accordingly affirm the jury's verdict.

Even if this Court finds that the defendant has met her burden of proof under the plain-error rule, the conviction should still be affirmed since the trial court's error was harmless. "An error is harmless only if it is determined beyond a reasonable doubt, that the verdict was not affected by the error." *State v. Soto*, 162 N.H. 708, 718 (2011). It is the State's burden to prove that an error is harmless. *Id.* As stated above, there was no evidence offered by either party supporting the conclusion that the defendant was unable to call for help. On the contrary, there was overwhelming and uncontroverted evidence that the defendant could have called for help but decided not to. In light of the jury's determination that the defendant's inaction amounted to recklessness, the erroneous instruction, if given correctly, would not have affected the jury's ultimate decision.

4. The court did not commit plain error by failing to spontaneously dismiss the failure to report adult abuse charge where the evidence established that the defendant knew that her elderly mother had fallen on the ground and couldn't get up, and failed to make a report as required by RSA 161-f:46.

The defendant argues that the State failed to prove the "knowing" mental state required by RSA 161-F:50 (2014). DB: 54. The defendant did not preserve this argument during her motion to dismiss at trial. DB: 344-348. Since the defendant's argument was not preserved, this Court reviews it under the plain-error standard. *Russell*, 159 N.H. at 490.

RSA 161-F:46 (2014) (amended 2016) required that any person who suspects or believes in good faith that an incapacitated adult has been subjected to abuse, neglect, self-neglect, exploitation or is living in hazardous conditions shall immediately make a report to the Department of Health and Human Services or local law enforcement. RSA 161-F:50 states that "[a]ny person who knowingly fails to make a report as required by RSA 161-F:46 shall be guilty of a misdemeanor." RSA 161-F:43, VII defined "incapacitated" as an adult whose physical, mental, or emotional ability is such that he or she is unable to manage "personal, home, or financial affairs in his or her best interest, or unable to delegate responsibility to a responsible caretaker or caregiver." RSA 161-F:43 (2014)(amended 2016).

The defendant's lone assertion is that the evidence was insufficient to prove she acted knowingly. DB: 54. RSA 626:2, II (b) (2016) states that "[a] person acts knowingly with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such nature or that such circumstances exist." RSA 626:2, V (2016) states

that "knowledge ... as to whether conduct constitutes an offense or as to the existence or meaning of the law defining the offense is [not] an element of such offense, unless the law so provides."

The defendant claims that the State failed to prove that she acted knowingly because there was no evidence that she knew of a change of circumstances that would have altered the BEAS's analysis since Carol Lacroix's last visit in late January. DB: 54. In making this argument, the defendant relies on the fact that during prior visits, the BEAS was unable to take any action because N.P. declined proposed services. The defendant's argument misinterprets RSA 16-F:46.

RSA 161-F:46's mandatory reporting requirement is not triggered by knowledge of a change of circumstances that would alter BEAS's analysis or its ability to take action. Interpreting the statute this way would require lay persons to be familiar with the BEAS's jurisdictional limits and anticipate the BEAS's internal policies. Rather, mandatory reporting under RSA 161-F:46 is triggered when any individual knows that an incapacitated adult has been subjected to abuse, neglect, self-neglect, exploitation or is living in hazardous conditions.

In the present case, the State proved the defendant: (1) knew that N.P. was incapacitated, (2) knew N.P. was engaging in self neglect or living in hazardous conditions, and (3) failed to make a report. Once the defendant saw her mother crawl to the couch and try to pull herself from the ground, she knew that N.P. was an incapacitated adult since N.P. wanted to get up but was incapable of doing so because of her physical limitations. The defendant's knowledge of N.P.'s incapacity was further

established when she and Meritel attempted to lift N.P. onto the couch but couldn't.

The evidence also established that the defendant knew that her mother was self-neglecting or living in newly discovered hazardous conditions. Although N.P had been living in hazardous conditions throughout her life, her circumstances changed dramatically when the defendant discovered that she had fallen and couldn't get off the floor. Despite N.P.'s history of medical problems and past refusals of services, she had never been trapped on the floor and dependent on the assistance of others in order to get herself up. Tr. 398. Accordingly, the defendant knew that N.P.'s situation was substantially different than it had been in the past as being stuck on the floor created a hazardous situation that had never been dealt with by the defendant, or the BEAS. Accordingly, the evidence was sufficient to establish that the defendant knowingly failed to make a report as required by RSA 161:F-46.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the trial court's decision to deny the defendant's motion to dismiss the criminal neglect charge on the basis of sufficiency of evidence and deny the defendant's requests to reverse the charges on plain-error grounds.

The State requests a fifteen-minute oral argument before a full panel.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

Gordon J. MacDonald

Attorney General

February 4, 2019

/s/ Brandon Garod

Brandon H. Garod
Assistant Attorney General
NH Bar ID No. 21164
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301
603-271-1217
brandon.garod@doj.nh.gov

CERTIFICATE OF COMPLIANCE

I, Brandon H. Garod, hereby certify that pursuant to New Hampshire Supreme Court Rule 16(11), this brief contains approximately 9,736 words, which is less than the total permitted by the rules of court. Counsel has relied on the word count of the computer program used to prepare this brief.

February 4, 2019

/s/ Brandon H. Garod
Brandon H. Garod

CERTIFICATE OF SERVICE

I, Brandon H. Garod, hereby certify that two copies of this brief was mailed this day, postage prepaid, to counsel for the defendant, Christopher M. Johnson, Chief Appellate Defender, at the following address:

Christopher M. Johnson, Esquire
Chief Appellate Defender
Appellate Defender Program
10 Ferry Street, Suite 202
Concord, NH 03301

February 4, 2019

/s/ Brandon H. Garod